

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

ALLISON BURGOS,)
) C.A. No. K10A-01-001 JTV
Appellant,)
)
v.)
)
PERDUE FARMS, INC., and the)
UNEMPLOYMENT INSURANCE)
APPEAL BOARD,)
)
Appellees.)

Submitted: January 12, 2011
Decided: April 19, 2011

Allison Burgos, Pro Se.

Laurence V. Cronin, Esq., and Stephanie S. Habelow, Esq., Smith, Katzenstein & Furlow, Wilmington, Delaware. Attorneys for Appellee Perdue Farms.

Upon Consideration of Appellant's
Appeal From Decision of
Unemployment Insurance Appeal Board
AFFIRMED

VAUGHN, President Judge

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ORDER

Upon consideration of the parties' briefs and the record of the case, it appears that:

1. Allison Burgos appeals an Unemployment Insurance Appeal Board decision which denied her claim for unemployment benefits. The Board concluded that just cause existed for her discharge from employment at Perdue Farms.

2. The appellant was employed by Perdue as a health improvement specialist from September 2, 2008 through April 9, 2009. On April 3, 2009, she suffered a seizure while at work. As a result of the seizure, her supervisor reviewed her medical file. There was no mention of any medical condition in the file; however, after the seizure the appellant openly admitted that she began having seizures approximately twenty years before. Although the petitioner had been seizure-free for the past five years, she made a conscious decision not to inform Perdue because she was embarrassed and humiliated by the condition. Additionally, she had been managing the seizures with a doctor's care.

3. Initially Perdue suspended the appellant, but after three days discharged her on the grounds that she had given a false response on her medical history questionnaire. More specifically, the appellant answered "no" to a question on the employment application that asked whether she had a history of convulsions or seizures. The appellant, after filling out the medical history questionnaire, certified that all information was true and acknowledged that she could be suspended or dismissed if any information was found to be false.

4. The appellant contends that the Board's decision was materially

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incorrect. She bases this argument on the fact that the Board reversed two prior decisions of the Appeals Referee and Claims Deputy that found she was terminated without just cause. She contends that the Board made its decision without receiving any additional evidence. She also contends that the Board's decision is incorrect as a matter of law because she cannot be both suspended and fired for the same incident. She argues that an employer cannot discharge an employee after suspending said employee, unless there is an additional disciplinary infraction. In other words, she contends that the employer cannot punish an employee twice for the same conduct.

5. The appellee contends that the Board had substantial evidence to support its decision. It argues that just cause for termination existed because the appellant falsified medical records during the employment application process. The appellee also contends that the Board is responsible for its own review of the evidence and makes its own determination on credibility. It is irrelevant, the appellee contends, that the prior hearings resulted in decisions favorable to the appellant. It contends that the only determination before the Court is whether Perdue had just cause to terminate the appellant.

6. In reviewing decisions from the Board, the court is limited to consideration of the record which was before the administrative agency.¹ The court must determine whether the findings and conclusions of the Board are free from legal

¹ *Hubbard v. Unemployment Ins. Appeal Bd.*, 352 A.2d 761, 763 (Del. 1976).

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error and are supported by substantial evidence in the record.² Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.³ The court does not weigh the evidence, determine questions of credibility, or make its own factual findings.⁴ The reviewing court merely determines if the evidence is legally adequate to support the agency's factual findings.⁵

7. The Board's decision denying unemployment benefits was premised on its finding that the appellant was discharged for just cause under 19 *Del. C.* § 3314.⁶ The term "just cause" denotes a wilful or wanton act in violation of either the

² *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265, 1266 (Del. 1981); *Pochvatilla v. United States Postal Serv.*, 1997 WL 524062, at *2 (Del. Super. 1997); 19 *Del. C.* § 3323(a) ("In any judicial proceeding under this section, the findings of the [UIAB] as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law.").

³ *Oceanport Ind. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986).

⁴ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

⁵ *Majaya v. Sojourners' Place*, 2003 WL 21350542, at *4 (Del. Super. 2003); see 19 *Del. C.* § 3323(a) (providing that, absent fraud, the factual findings of the Board shall be conclusive and the jurisdiction of a reviewing court shall be confined to questions of law).

⁶ The statute provides: "An individual shall be disqualified for benefits ... [f]or the week in which the individual was discharged from the individual's work for just cause in connection with the individual's work and for each week thereafter until the individual has been employed in each of 4 subsequent weeks" 19 *Del. C.* § 3314(2).

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employer's interest, or the employee's expected standard of conduct.⁷ Wilful or wanton conduct is "that which is evidenced by either conscious action, or reckless indifference leading to a deviation from established and acceptable workplace performance."⁸ In a termination case, the employer has the burden of proving just cause.⁹

8. Violation of a reasonable company rule may constitute just cause for discharge, if the employee is aware of the policy and the possibility that termination may result.¹⁰ This Court uses a two-step analysis to evaluate just cause: "1) whether a policy existed, and if so, what conduct was prohibited, and 2) whether the employee was apprised of the policy and if so, how was he made aware."¹¹ Knowledge of a company policy may be established by evidence of a written policy, such as an employer's handbook,¹² or by previous warnings of objectionable conduct.¹³

⁷ *Moeller v. Wilmington Sav. Fund Soc'y*, 723 A.2d 1177, 1179 (Del. 1999); *Tuttle v. Mellon Bank of Del.*, 659 A.2d 786, 789 (Del. Super. 1995); *Abex Corp. v. Todd*, 235 A.2d 271, 271 (Del. Super. 1967).

⁸ *MRPC Fin. Mgmt. LLC v. Carter*, 2003 WL 21517977, at *4 (Del. Super. 2003).

⁹ *Country Life Homes, Inc. v. Unemployment Ins. Appeal Bd.*, 2007 WL 1519520, at *3 (Del. Super. 2007); *Carter*, 2003 WL 21517977, at *4.

¹⁰ *McCoy v. Occidental Chem. Corp.*, 1996 WL 111126, at *3 (Del. Super. 1996).

¹¹ *Id. See Parvusa v. Tipton Trucking Co. Inc.*, C.A. No. 92A-12-009 (Del. Super. 1993).

¹² *Id.* (Citing *Honore v. Unemployment Ins. Appeal*, C.A. No. 92A-12-007 (Del. Super. 1993)).

¹³ *Id.*

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9. The appellant's first contention, that the Board could not reverse prior decisions without new evidence, is without merit. "The Board may base its decision on evidence previously submitted to the Appeals Referee or on new, additional evidence."¹⁴ In fact, the Board conducts its own review of the evidence and makes its own determination of credibility that may differ from the conclusions and findings of previous hearings.¹⁵ In addition, in this case Perdue did in fact present new evidence – the medical questionnaire and a written statement signed by the appellant.

10. Turning next to the appellant's contention that she could not be both suspended and terminated for the same incident, it is clear from the record that Perdue followed a single, continuous disciplinary action in terminating the appellant for falsifying medical records. The undisputed testimony of Perdue is that the appellant was suspended pending a decision as to whether or not she should be terminated. The employer cannot be criticized for taking the precautionary step of investigating the problem during the suspension period, before terminating the appellant.

11. Finally, there is substantial evidence that the appellant was terminated for just cause. The appellant admits that she was not truthful when she answered the question on the medical questionnaire regarding seizures. It is undisputed that the questionnaire fully explained the consequences of not being truthful. That explanation of the consequences constituted company policy, of which the appellant was aware. Furthermore, it is well-settled Delaware law that when an employee

¹⁴ *Robbins v. Deaton*, 1994 WL 45344, at *4 (Del. Super. 1994).

¹⁵ UIAB Regulation 4.1; *Robbins*, 1994 WL at *4.

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wilfully makes false statements on an employment application, just cause for discharge is established.¹⁶

12. Therefore, since the Board's decision is supported by substantial evidence and is free of legal error, its decision is *affirmed*

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotary
cc: Order Distribution
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¹⁶ *Cross v. Unemployment Ins. Appeals Bd.*, 1985 WL 188972, at *1 (Del. Super. 1985); *see also Bressi v. Eckerds Corp.*, 1994 WL 555471, at *2 (Del. Super. 1994).